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11
12 IN THE UNITED STATES BANKRUPTCY COURT
13
14 FOR THE DISTRICT OF ARIZONA

15 In re:) Chapter 11
16)
17 GREEN FUEL TECHNOLOGIES,) No. 2:17-bk-00594-BMW
18)
19) UNITED STATES TRUSTEE'S
20) MOTION FOR STATUS HEARING
21) ON PLAN CONSUMMATION; TO
22) COMPEL FILING OF POST-
23) CONFIRMATION REPORTS AND
24) PAYMENT OF QUARTERLY FEES;
25) FOR ENTRY OF JUDGMENT FOR
26) UNPAID FEES; AND/OR FOR
27) DISMISSAL OR CONVERSION
28) OF CASE
Debtor.

18 The United States Trustee for the District of Arizona,
19 Region 14 ("UST"), by and through her undersigned attorney, and
20 in accordance with the administrative duties set forth in 28
21 U.S.C. § 586(a) and 11 U.S.C. § 307, hereby respectfully moves
22 this court for an order setting a status hearing pursuant to 11
23 U.S.C. § 105 in order to determine the extent of consummation,
24 if any, of the Debtor's Chapter 11 Plan (the "Plan"), which was
25 confirmed pursuant to this Court's Order dated September 14,
26 2017, to compel the filing of delinquent post-confirmation

1 financial reports, and to compel the payment of outstanding
2 quarterly fees due to the United States Trustee or the entry of
3 a judgment for all outstanding fees. It is also respectfully
4 requested that this court consider dismissing or converting this
5 case to Chapter 7 for cause pursuant to 11 U.S.C. § 1112(b), if
6 it is determined that such action is warranted and appropriate.
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8 This Motion is supported by the entire record of this case,
9 the grounds more specifically set forth in the attached
10 Memorandum of Points and Authorities.

11 RESPECTFULLY SUBMITTED this 18th day of September, 2018.

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13 ILENE J. LASHINSKY
14 United States Trustee
District of Arizona

15 CJP AZ Bar # 009797
16 CHRISTOPHER J. PATTOCK
17 Trial Attorney
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1. On January 20, 2017, Green Fuel Technologies (the "Debtor") filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code.

3. The Debtor is delinquent in the filing of post-confirmation quarterly reports for the first quarter of 2018, and the second quarter of 2018.

5. Despite the passage of more than a year, the Debtor has not yet obtained a Final Decree. Moreover, the Debtor previously filed a motion for final decree on December 1, 2017, but - following an objection filed by the UST - did not pursue its motion any further. See docket number 227.

A. Legal Grounds for Dismissal or Conversion

11 U.S.C. § 1112(b)(1) provides that absent unusual
circumstances specifically identified by the court which

1 establish that the requested conversion or dismissal is not in
2 the best interests of creditors and the estate, the court shall
3 convert a case under Chapter 11 to chapter 7 or dismiss it,
4 whichever is in the best interests of creditors and the estate,
5 if the movant establishes "cause." (Emphasis supplied.) "Cause"
6 is defined by 11 U.S.C. § 1112(b)(4) to (non-exclusively)
7 include: (F) un-excused failure to satisfy timely any filing or
8 reporting requirement established by this title or by any rule
9 applicable to a case under this title; (M) Inability to
10 effectuate substantial consummation of a confirmed plan; (N)
11 material default by the debtor with respect to a confirmed plan.
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14 Courts have wide discretion in determining what constitutes
15 such cause. See *In re Johnston*, 149 B.R. 158, 160 (9th Cir. BAP
16 1992) and *Matter of Nugelt, Inc.*, 142 B.R. 661, 665 (Bankr. D.
17 Del. 1992) (citing *In re Berryhill*, 127 B.R. 427, 430 (Bankr.
18 N.D. Ind. 1991)).
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20 **B. Post Confirmation Compliance With Plan**

21 Over a year has passed since the confirmation of the
22 Debtor's plan. The Debtor has not followed up on its December
23 2017 motion for final decree. The Debtor's last post-
24 confirmation report, for the 4th quarter of 2017, reveals that it
25 has made only one plan payment to unsecured creditors (for
26 \$8,252; See docket number 234). This all suggests the
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1 possibility that the Debtor is unable to effectuate substantial
2 consummation of a confirmed plan and/or is in material default
3 of its plan, thus constituting cause within the meaning of 11
4 U.S.C. Sections 1112(b)(4)(M) and (N), respectively.

5 **C. Post-Confirmation Reports**

6 The United States Trustee's Guidelines and 28 U.S.C.
7 § 586(a)(3) require all post-confirmation debtors to file post-
8 confirmation quarterly operating reports on a quarterly basis.
9 The Debtor's failure to file reports constitutes cause under
10 both subsections "F" (failure to satisfy reporting requirements)
11 and "N" (material default) of § 1112(b)(4).
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14 **D. Post Confirmation Fees**

15 Payment of quarterly fees to the United States Trustee
16 Program is required by 28 U.S.C. § 1930(a)(6), and Debtors are
17 obligated to pay them until their cases are dismissed,
18 converted, or closed by the court. See *In re Rhead*, 232 B.R.
19 175 (Bankr. D. Ariz. 1999). The failure to make such payments
20 constitutes cause for dismissal or conversion of a chapter 11
21 case under subsections "K" (failure to pay fees required under
22 chapter 123 of title 28), "M" (inability to effectuate
23 substantial consummation of a confirmed plan), and "N" (material
24 default by the debtor with respect to a confirmed plan) of
25 § 1112(b)(4). This Court has jurisdiction to order payment of
26 both pre- and post-confirmation quarterly fees pursuant to 28
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1 U.S.C. §§ 1334 and 157, and *United States Trustee v. Kroy*
2 *(Europe) Limited*, 222 B.R. 345 (D. Ariz. 1998).

3 **E. Alternative to Dismissal or Conversion**

4 If the Court does not believe conversion or dismissal to be
5 appropriate at this time, it is alternatively and respectfully
6 requested that the Court set deadlines by which the Debtor must:
7 1) bring current all delinquent post-confirmation operating
8 reports and quarterly fees; and 2) file a motion for final
9 decree.

10 WHEREFORE, the United States Trustee respectfully requests
11 the Court conduct a status hearing: (1) to determine whether the
12 Debtor is in default under its Plan; (2) to compel the filing of
13 post-confirmation reports; (3) to compel the payment of
14 delinquent quarterly fees or enter judgment for any delinquent
15 quarterly fees owed to the United States Trustee and (4) to
16 determine whether conversion or dismissal of the case is
17 warranted for cause.
18

19 RESPECTFULLY SUBMITTED this 18th day of September, 2018.

20 ILENE J. LASHINSKY
21 United States Trustee
22 District of Arizona

23 CJP AZ Bar # 009797
24 CHRISTOPHER J. PATTOCK
25 Trial Attorney
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1 Copies of the foregoing sent by e-mail
2 on September 18, 2018 and by regular mail
3 on September 19, 2018, to:

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/s/ Christopher J. Pattock